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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,701	02/16/2005	Peter Emmanuel Petros	4150/005	1385
23440 7590 03/04/2010 GOTTLIEB RACKMAN & REISMAN PC 270 MADISON AVENUE 8TH FLOOR NEW YORK, NY 10016-0601				
EXAMINER				
MASHACK, MARK F				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/524,701

**Applicant(s)**

PETROS, PETER EMMANUEL

**Examiner**

MARK MASHACK

**Art Unit**

3773

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3-15, 17-28, 30, 32, 33, 35-39, 41, 42, 44, 46-48 and 50-55 is/are pending in the application.
- 4a) Of the above claim(s) 1, 3-15, 35-39, 41, 42, 44, 46-48, 50 and 51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-28, 30, 32, 33, 35 and 52-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

This office action is in response to a communication dated 12/16/2009. Claims 1, 3-15, 17-28, 30, 32-33, 35-39, 41-42, 44, 46-48, 50-55 are pending. Claims 1, 3-15, 35-39, 41-42, 44, 46-48, 50-51 have been withdrawn.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. **Claims 17-20, 23-28, 30, 32-33, 52-55** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Colleran et al.** ("**Colleran**" **US 2003/0088250**) in view of **Thal (US 5,891,168)**.

**Colleran** disclose a tissue anchor comprising a base **230** and a head **215, 216, 219**. Head comprises a barbed configuration (FIGs 4) with prongs **219a'** comprising a tapered, pointed, resilient flexible tip (Paragraph 58). Said prongs 219a', b', c', d' are

equidistant spacing around the central axis of the head (cross section 4E as shown in FIG 4D) and divergent away from the end of the head in the direction of the base (FIG 4A). The head comprises an aperture **235** and a locking member **250**, **254** is inclined with respect to the base when the suture is present and allows the filamentary element to pass in one direction and impedes it in the opposite direction (FIGs 4 and Paragraph 59-61). The locking member has a face in the one direction and a face in the opposite direction with an edge extending between the two which frictionally engages the suture (FIGs 4A-G and Paragraph 59-61). **Colleran** discloses all of the claimed limitations except for the prongs having a substantially cylindrical configuration tapering to a conical tip. However, **Thal** teaches of a similar anchor comprising substantially cylindrical prongs **16**, **18** configuration tapering to a conical tip (FIG 1). It would have been obvious to modify the device of **Colleran** with the prong configuration as taught by **Thal** in order to facilitate the attachment of the anchor to bone mass (Column 3, Lines 4-7 and Column 4, Lines 7-16).

4. **Claims 18-21, 23-28, 30, 32-33, 52-54** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Colleran** in view of **Thal** as applied to claim 17 above, and further in view of **Pagedas et al.** ("**Pagedas**" **US 6,015,428**).

**Colleran** in view of **Thal** disclose all of the claimed limitations including a locking member which is intended to allow the suture to pass in one direction and impedes it in the opposite direction (FIG 4 and Paragraphs 59-61). If the previous rejection is not convincing concerning the locking member, **Pagegas** discloses a similar device with a

plurality of embodiments (FIG 1-4 and 16-17) that are intended to provide a similar one-way locking member. The locking member has a face in each of the directions of the suture (FIG 1-4 and 16-17). One embodiment (FIG 1-4) depicts a locking element (three of the tongues **36**) and an opposed edge (the remaining tongue **36**) wherein the locking element comprises slots extending from the proximate face to atleast an intermediate portion across the surface of the filamentary element. It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute one known element for another to yield predictable results. Given the teachings of **Pagedas**, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the locking element of **Colleran** for the locking element of **Pagedas**. Doing so would provide an improved means for enabling the passage of the suture through the aperture and prevent the withdrawal.

5. **Claims 17-19, 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Biggs et al.** ("**Biggs**" US 6,599,311).

**Biggs** discloses a tissue anchor comprising a base (bottom of **152**), a head (top of **152**), and prongs **38'**, and the base formed with an aperture **160** adapted to receive a length of a suture and to permit slidable movement in one direction but to restrict movement in the opposite direction by a locking mechanism **156** (Column 13, Line 53, - Column 14, Lines 28). **Biggs** does not explicitly disclose of the shape of the distal tip in that embodiment. However, **Biggs** teaches of a similar anchor tip with a conical tip **512**.

It would have been obvious to modify the embodiment comprising the tissue anchor with the conical tip in order to facilitate anchorage into lung or airway tissue.

### ***Response to Arguments***

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

7. The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Akopov et al. (US 5,242,457) and Biggs et al. US 6,174, 323.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK MASHACK whose telephone number is (571)270-3861. The examiner can normally be reached on Monday-Thursday 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Mashack/  
Examiner, Art Unit 3773

/(Jackie) Tan-Uyen T. Ho/  
Supervisory Patent Examiner, Art Unit 3773